IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 437 OF 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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THE NEW INDIA ASSURANCE CO. LTD - Appellant(s)
Versus
ARVIND POPATLAL SOMAIYA FOR HIMSELF & GUARDIAN RESPONDENT NOS. 3 & 4 - Respondent(s)

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Appearance :
Shri Rajni H. Mehta for Appellant(s).
Shri M.B. Gohil for Respondent(s) : 1 - 3.
Ms. Manisha Lavkumar, AGP for Respondent(s) : 4 - 5.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 09/08/2007

ORAL JUDGMENT

The Insurance Company, being aggrieved by the award dated 7th December, 1989 passed by the learned Motor Accident Claims

Tribunal (Auxiliary), Rajkot in M.A.C. Case No.303 of 1984, is before this Court with a simple submission that in accordance with Section 95(2)(b)(i) of the Motor Vehicles Act and the terms of the policy, the liability of the Insurance Company would be limited to a sum of Rs.50,000/- and the learned Tribunal below was unjustified in holding that the Insurance Company would be liable to the entire claim.

2. Shri M. B. Gohil, learned Counsel for the claimants, after taking me through the provisions contained in Section 95(2)(b) of the Motor Vehicles Act, submitted that against the third parties, the liability of the Insurance Company would be unlimited and as in the present matter, the cart-puller was hit by the offending vehicle, the liability should be held to be unlimited.

3. The insurance cover/policy is available on the records at Exh.62. The limits of the liability are in two parts. The first part says: “limit of the amount of Company's liability under Section 2-1(i) in respect of any one accident – 50,000/-”, while the second part says: “limit of the amount of the Company's liability under Section 2-1(ii) in respect of any one claim or series of claims arising out of one event – Rs.50,000/-” . In view of the clear agreement between the parties that the liability of the Insurance Company would be Rs.50,000/-, the learned Tribunal could not hold the Insurance Company liable for the entire

amount.

4. The appeal is allowed. It is directed that the Insurance Company would be liable to pay a sum of Rs.50,000/- with interest over it at the rate awarded by the learned Tribunal below and *pro rata* costs. Rest of the award against the interest of the Insurance Company is set aside.

5. I am told by Shri Mehta that the entire amount under the liability has been deposited by the Insurance Company with the learned Tribunal and probably the same has been disbursed in favour of the claimants. He, therefore, prays for appropriate direction.

6. In case the entire amount is not disbursed in favour of the claimants, then, the amount lying with the learned Tribunal be refunded back in favour of the Insurance Company. In case the entire amount has been withdrawn by the claimants, then, the Insurance Company would be entitled to recover the amount deposited by them in excess of their responsibility with interest at the rate of 6% per annum from the date of deposit, from the State Government.

[R.S.Garg, J.]

*kamlesh**